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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID E. HAWES,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 82A04-0701-CR-9
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable William H. Miller, Judge
Cause No. 82D02-9912-CF-1049

November 5, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant David E. Hawes appeals following his guilty plea to two counts of Child Molesting,¹ a class A felony. Finding that Hawes has waived one of his arguments and that of the remaining two, one is not available for review on direct appeal and one is not available to Hawes at all, we affirm the judgment of the trial court.

On November 6, 1999, Hawes sedated his twelve-year-old niece, M.S., and while she was asleep, he penetrated her vagina with his fingers on two separate occasions and repeatedly photographed the molestation. The State charged Hawes with nine counts of class A felony child molesting, one count of class D felony child exploitation, one count of class D felony auto theft, and one count of class D felony theft. On September 5, 2000, Hawes pleaded guilty but mentally ill to two counts of class A felony child molesting without the benefit of a plea agreement. On September 14, 2000, the trial court accepted Hawes's guilty plea and sentenced him to forty years imprisonment on each of the two counts, to be served consecutively. The State then dismissed the remaining ten charges against Hawes. Hawes now brings this belated appeal.

Hawes first challenges the factual basis for his guilty plea. It is well settled, however, that a defendant who pleads guilty is not entitled to challenge the propriety of his convictions by means of a direct appeal. Collins v. State, 817 N.E.2d 230, 231 (Ind. 2004). Instead, such challenges must be raised in a petition for post-conviction relief. Tumulty v. State, 666 N.E.2d 394, 395 (Ind. 1996). Therefore, we will not review this challenge.

¹ Ind. Code § 35-42-4-3.

Next, Hawes argues that his convictions violate double jeopardy. Hawes pleaded guilty to two counts of class A felony child molesting, and although he did so without the benefit of a plea agreement, it is apparent that he reaped a substantial benefit from the plea inasmuch as the State subsequently dismissed all of the remaining ten felony charges. Under these circumstances, Hawes has waived any double jeopardy claims. See Davis v. State, 771 N.E.2d 647, 649 n.4 (Ind. 2002) (explaining that defendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, including double jeopardy challenges).²

Finally, Hawes argues that the trial court improperly enhanced his sentences by finding aggravators that did not comply with the rule announced in Blakely v. Washington, 542 U.S. 296 (2004). Hawes, however, was convicted in 2000 for the 1999 molestation of his niece, and he is appealing by means of a belated notice of appeal. Consequently, Hawes is not entitled to retroactive application of the Blakely rule. See Gutermuth v. State, 868 N.E.2d 427, 434-35 (Ind. 2007) (holding that because a defendant's case is "final" when the time for filing a timely direct appeal has expired, Blakely is not retroactive for belated appeals).

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

² Waiver notwithstanding, we observe that Hawes pleaded guilty but mentally ill to two separate acts of child molesting. Specifically, he sedated M.S. and then penetrated her vagina with his fingers on two separate occasions. Appellant's App. p. 52, 173-74. That those occasions were separated by only one minute does not change the fact that he committed the act twice. Consequently, his dual convictions do not violate double jeopardy.